

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:19cr31-4
(Judge Kleeh)

GERALD KYLER,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 136],
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On September 9, 2019, the Defendant, Gerald Kyler ("Kyler"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count Thirteen of the Indictment. Kyler stated that he understood that the magistrate judge is not a United States District Judge, and Kyler consented to pleading before the magistrate judge. This Court referred Defendant's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Defendant Kyler's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate

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judge found that Defendant Kyler was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 136] finding a factual basis for the plea and recommending that this Court accept Defendant Kyler's plea of guilty to Count Thirteen of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither the Defendant nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 136], provisionally **ACCEPTS** Defendant Kyler's guilty plea, and **ADJUDGES** him **GUILTY** of the crime charged in Count Thirteen of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until

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it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Kyler, and prepare a presentence investigation report for the Court;

2. The Government and Defendant Kyler shall each provide their narrative descriptions of the offense to the Probation Officer by **October 7, 2019**;

3. The presentence investigation report shall be disclosed to Defendant Kyler, counsel for Defendant, and the Government on or before **December 6, 2019**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **December 20, 2019**;

5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **January 3, 2020**; and

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6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **January 3, 2020.**

The magistrate judge released Defendant Kyler on the terms of the *Order Setting Conditions of Release* [Dkt. No. 20-5] filed on May 30, 2019.

The Court will conduct the **Sentencing Hearing** for Defendant on **Thursday, January 30, 2020, at 10:00 A.M.**, at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: September 25, 2019

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE